

John E Reinhardt
Fire Chief
James M. Brunner III
Deputy Chief

Kingston Fire Department

Building Safety Division

5 Garraghan Drive
Kingston, NY 12401
Phone (845) 331-1217
Fax (845) 331-1224



City of Kingston Sidewalk Café Permit Application (Chapter 346 of the City Charter and Code)

The following must be submitted along with this application:

- Notarized Affidavit
- Copy of NYS Liquor License, ONLY IF alcohol beverages are to be sold and/or consumed in sidewalk café area. Until such time, a permit may be issued with limitations.
- Insurance Certificate naming the City of Kingston as Additional Insured, in accordance with "SCHEDULE A" of enacting legislation.
- Scale drawing of sidewalk/café layout, lighting, plant installations, signage, including area for continuous safe pedestrian passage for general public, barriers and any other apparatus. (Identify materials, colors and furniture types)
- Description of how this area will be utilized and managed.
- Non-refundable \$50 Fee - Check payable to Kingston City Comptroller

ALL PERMIT APPLICATIONS AND SUPPORTING DOCUMENTS MUST BE SUBMITTED, WITH ORIGINAL SIGNATURE, TO THE KINGSTON BUILDING SAFETY DIVISION, 5 GARRAGHAN DRIVE, KINGSTON, NY 12401 (845) - 331-1217

Proposed Sidewalk Café/ Name of Restaurant _____

Address of Restaurant/Vendor _____

Check One: New Application _____

Renewal Application _____

Regular Hours of Operation _____

Does Business Sell/Serve Alcoholic Beverages? Yes _____ No _____

Does Business have valid Special Permit and/or Certificate of occupancy? Yes _____ No _____

Applicant Name _____

Telephone Number _____

Cell Number _____

Address _____

Zip Code _____

E-mail _____

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I, _____, hereby apply for a permit from the City of Kingston to operate and manage a sidewalk café at the above address. I certify that I have received a copy of the Rules and Regulations (Chapter 366 of the City Code) and have reviewed said regulations governing the operation of a sidewalk café in the City of Kingston, New York. I hereby agree to fully comply with all of the rules and regulations. I understand that the sidewalk café permit may be revoked if I fail to abide by the parameters of the adopted legislation.

DATE SIGNATURE OF APPLICANT PRINT NAME OF APPLICANT

Sworn to before me this _____ day of _____, 20_____.

Notary Public

THE FOLLOWING IS REQUIRED IF THE OPERATOR IS NOT THE LAND OWNER:

As owner of the property located at _____, Kingston, New York, 12401, I hereby acknowledge and accept full responsibility for activity which occurs on within the sidewalk café area, and understand fully all the rules and regulations set forth by the City of Kingston.

DATE SIGNATURE OF PROPERTY OWNER PRINT NAME OF OWNER

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AFFIDAVIT

STATE OF NEW YORK)

)ss:

COUNTY OF ULSTER)

I, _____, being duly sworn, say:

1. I am the _____ of _____
(title/relationship to establishment - i.e.-owner/manager) (establishment)
in Kingston, New York and am authorized by _____
(establishment)
to make the following representations to the City of Kingston.

2. I make this affidavit to the City of Kingston, New York to issue a Sidewalk Café Permit to
_____ and recognize that the City of Kingston is
(establishment)
relying on facts and information presented within this application as representation, to issue such permit.

3.* That _____ is licensed and authorized by the New York State
(establishment)
Liquor Authority to serve alcohol in the outdoor area more fully described in the site plan submitted with the
permit application. A copy of _____
(establishment)
liquor license for said establishment has been amended to incorporate the sidewalk café area, which is in full force
and effect and attached.

Sworn to me this _____ day of _____

SIGNATURE _____

_____, 20____.

NOTARY PUBLIC

- NOTE: Item Number 3 is ONLY REQUIRED if alcohol is to be purchased, served and consumed within the sidewalk café area. No alcohol may be served, purchased or consumed prior to the permit holder providing a valid license to the City of Kingston. The City will issue a permit which can be amended once the appropriate approvals are in place.

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FOR INTERNAL OFFICE USE ONLY:

Application Received: _____

Fee Received and Recorded: _____

Referrals: Planning _____ DPW _____ BSD _____ KPD _____

Insurance Certificate Filed: _____

Liquor License Provided (If Applicable): _____

PERMIT NUMBER: _____

DATE ISSUED: _____

EXPIRATION DATE: _____

Signature of Authorized City Official

Print Name

RESOLUTION 199 OF 2012 OF THE CITY OF KINGSTON, NEW YORK, ADDING CHAPTER 366 TO THE CODE OF THE CITY OF KINGSTON TO PROVIDE FOR THE USE AND REGULATION OF SIDEWALK CAFES

Ordinance: Sidewalk Cafes

WHEREAS THE City of Kingston desires to provide for the establishment and regulation of the use of sidewalk cafes; and

WHEREAS, the City wishes to allow sidewalk cafes in locations where they are determined to be appropriate by the City, and

WHEREAS, the City desires to promote and protect the public health, safety and general welfare in relation to the operation of sidewalk cafes and specifically to provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes, to insure access to adjacent commercial and retail uses, and

WHEREAS, certain businesses in the City currently operate sidewalk cafes; and

WHEREAS, it is in the interests of the City to continue to permit the operation of said sidewalk cafes in the City of Kingston; and

WHEREAS, it is in the best interests of the City to establish certain minimum standards for the operation of said sidewalk cafes pending development of more comprehensive requirements,

SIDEWALK CAFES

Sec. 366-1 - Purposes.

Sec. 366-2. - Definition.

Sec. 366-3 -License

Sec. 366-4 - Standards.

Sec.366- 6. - Penalty.

Sec. 366.7 – Revocation for Cause

§366-1- Purposes

The sidewalk café regulations as established in this chapter are designed to allow sidewalk cafes on private and public property in locations where they are determined to be appropriate by the City and to promote and protect the public health, safety, general welfare and amenity. These general goals include, among others, the following specific purposes:

- 1)To provide adequate space for pedestrians on the sidewalk adjacent to the sidewalk cafes, and to insure access to adjacent commercial and retail uses.
- 2)To promote sidewalk cafes as useful and properly planned visual amenities which better relate to the streetscape.
- 3) To promote the desirable use of land and buildings and thereby protect the city's tax revenue.

§ 366-2 – Definition

A “sidewalk café” is an outdoor dining area, located on a private sidewalk or public property, which is public through dedication or easement, or public right-of-way that provides waiter or waitress service and contains readily removable tables, chairs, railings and may contain planters. It is otherwise unenclosed by fixed walls and open to the air, except that it may have a retractable awning or umbrellas, or other nonpermanent covers.

§366-3 –License, site plan, standards, etc.

- a. No sidewalk café shall operate in the City of Kingston without a license issued in accordance with this chapter.
- b. The City of Kingston Fire Department is authorized to issue a license to operate a sidewalk café on private property or on public property provided that the standards set forth in §366-4 have been complied with by the occupant.
- c. A license to operate a sidewalk café shall be issued only to the owner of the business which operates the proposed café.
- d. Licenses to operate sidewalk cafes shall be for a renewable term of two years.
- e. A non-refundable application fee of \$50.00 shall be charged.
- f. Sidewalk café licenses are non-transferable. In the event of a change in ownership of a business which operates a sidewalk café, a new license must be obtained prior to continued operation of the sidewalk café.
- g. Prior to the issuance of a license to operate a sidewalk cafe, the applicant shall file with the Chief of the City of Kingston Fire Department, an agreement to indemnify and save harmless the City of Kingston, its officers and employees against any loss or liability or damage, including expenses and costs for bodily injury, and for property damage, sustained by any person as a result of the applicant’s operation of a sidewalk café.
- h. Prior to the issuance of a license to operate a sidewalk cafe, the applicant shall also file with the Chief of the Kingston Fire Department a certificate of insurance demonstrating that the applicant has a satisfactory amount of public liability, property and workers compensation insurance as set forth in Schedule A, and naming the city as co-insured for such insurance covering the operation of a sidewalk café.
- i. The operator of a sidewalk café must provide proof of insurance set forth in paragraph (h) to the Chief of the Kingston Fire Department on or before January 1 of each calendar year.
- j. The operator of a sidewalk café must submit a site plan to the Chief of the Kingston Fire Department, on a form developed by the Chief of the Kingston Fire Department and the City Planning Department. The operator must provide such information as requested by the Chief of the Kingston Fire Department, including but not limited to the number of proposed tables, the linear square footage of the proposed outdoor café and a map showing the design and location of all temporary structures such as retractable awnings, planters, landscaping, tables,

chairs, umbrellas and other equipment, as well as lighting and electrical outlet locations. The owner must also indicate whether alcoholic beverages will be prepared and/or served within the proposed sidewalk café.

- k. In the event that the café will be operating in a rental space, the operator must submit with the site plan a written consent from the owner of the property.
- l. The Chief of the Kingston Fire Department shall distribute copies of the site plan to the Chief of the Kingston Police Department, Superintendent of Public Works and the City Planner for review and comments in relation to compliance with this chapter. If a retractable awning or signage is proposed, then the Building Safety Division of the Kingston Fire Department shall have jurisdiction over this part of the plan and shall require the applicant to comply with the provisions of the New York State Uniform Fire Safety and Building Code and Chapter 355 of the Code of the City of Kingston with respect thereto.
- m. Based upon the review comments as listed above, the Chief of the Kingston Fire Department may issue the license approving the site development plan as submitted or with modifications or any conditions he deems necessary to implement the intent of this ordinance.
- n. If the Chief of the Kingston Fire Department disapproves the site development plan or determines not to issue the license, he shall state his reason for his determination in a letter to the applicant. The applicant may then petition the common council to be heard.
- o. Sidewalk cafes shall close operation by 12:30 A.M. on Monday through Thursday mornings and by 2:00 A.M. on Friday, Saturday and Sunday mornings. Notwithstanding the above, hours of operation of a sidewalk café permit may be restricted as necessary by the Chief of the Kingston Fire Department.
- p. Licenses to operate sidewalk cafes shall not be granted absent proof that the operator has set aside a minimum of thirty six (36) inches of clear distance, exclusive of the area occupied by the sidewalk café, free of all obstructions (such as trees, parking meters, utility poles, etc.) in order to allow adequate pedestrian and/or wheelchair movement.
- q. The applicant shall be responsible for delineating the café area by setting up a barrier such as planters or a railing to physically separate patrons from pedestrian traffic.
- r. No structure or enclosure to accommodate the storage of accumulated garbage may be erected or placed adjacent to or separate from the sidewalk café on public property.
- s. A sidewalk café shall not interfere with any public service facility, including, but not limited to bus stops; lampposts, lighting fixture, mailboxes, public benches, or telephones located on the sidewalk.

- t. Furnishing of all sidewalk cafes shall be readily removable, including but not limited to all lights, tables, railings, heaters and umbrellas. Furnishings may not be attached to the sidewalk or to any other public property, either in a permanent or temporary manner.
- u. Operation of a sidewalk café shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties, and shall be in accordance with all applicable codes and regulations.
- v. All electrical wiring and fixtures associated with or part of the sidewalk café shall be installed by a licensed electrician and shall be in conformance with all applicable city ordinances.
- w. Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance that may damage the sidewalk or cause pedestrian injury.
- x. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk café, within the confines of the sidewalk café area, shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the sidewalk café shall take whatever steps are necessary to procure the appropriate license from the state liquor authority if he intends to serve alcoholic beverages in the sidewalk café area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in this state.
- y. The sidewalk café permit must be prominently displayed by the permit holder in a publicly visible location

§366-4 – Penalty

Any person who shall violate any of the provisions of this chapter shall be liable to prosecution in the city court and or any court of competent jurisdiction and shall, upon conviction thereof, be liable for a fine of up to two hundred and fifty dollars (\$250.00). Each and every day such violation continues shall be deemed a separate violation.

§333-5 Revocation for Cause

Any license granted under the provisions of this section may be suspended or revoked by the Chief of the Kingston Fire Department for cause. The licensee may request a hearing before the Chief of the Kingston Fire Department or his designee within five (5) days of receipt of notice of suspension or revocation. Any such hearing shall be held after reasonable written notice by the Chief of the Kingston Fire Department to the licensee of the violations, and the licensee shall have the right to be represented by counsel, present evidence on his or her behalf and confront the evidence against him. Cause for revocation or suspension of a temporary license shall be any condition that may endanger the health and safety of the public.

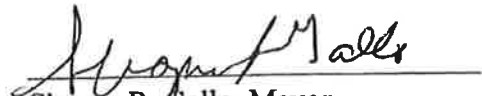
SECTION-2. All ordinances and parts thereof, inconsistent herewith, are hereby repealed.

SECTION-3. This ordinance shall take effect immediately after passage, approval and publication as provided by law.

Submitted to the Mayor this 3rd day of
October, 2012

Approved by the Mayor this 3rd day
of October, 2012


Carly Williams, Clerk


Shayne R. Gallo, Mayor

Adopted by Council on October 2, 2012



New York State and Local Sales and Use Tax

Certificate of Capital Improvement

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor.

Read this form completely before making any entries.

This certificate may not be used to purchase building materials.

Name of customer (print or type)			Name of contractor (print or type)		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code
Certificate of Authority number (if any)			Certificate of Authority number (if any)		

To be completed by the customer:

Describe capital improvement to be performed:

Project name			
Street address (where the work is to be performed)	City	State	ZIP code

I certify that:

- I am the ☐ owner, ☐ tenant, of the real property identified on this form, **and**
- The work described above will result in a capital improvement to the real property within the guidelines listed on the back of this form, **and**
- This contract (check one) ☐ includes, ☐ does **not** include, the sale of tangible personal property that, when installed, retains its identity as tangible personal property and does not become a permanent part of the real property.

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor, if it is determined that this work does not qualify as a capital improvement, **and**
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) transferred to me pursuant to this contract, when the property installed by the contractor does not become a permanent part of the real property; **and**
- I will be subject to civil or criminal penalties (or both) under the Tax Law, if I issue a false or fraudulent certificate.

Signature of customer	Title	Date
-----------------------	-------	------

To be completed by the contractor:

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above. (A copy of the written contract, if any, is attached.)

I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

Signature of contractor or officer	Title	Date
------------------------------------	-------	------

This certificate is not valid unless all entries are completed.

Guidelines

If a contractor gets a properly completed (that is, no required entries on the form are left blank) Form ST-124, *Certificate of Capital Improvement*, from the customer within 90 days after rendering services, the customer bears the burden of proving the job or transaction was a capital improvement (that is, was not taxable to the customer).

If a contractor does not get a properly completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a properly completed certificate, however, does not change the taxable status of a transaction; that is, a contractor may still show that the transaction was a capital improvement. If a contractor erects a building for a customer, or performs some other work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. If the work performed is taxable (such as repair, service, or maintenance), the contractor must collect tax from the customer on the full charge to the customer, including labor and materials.

The contractor must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

When the customer completes this certificate and gives it to the contractor, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is defined in section 1101(b)(9) of the Tax Law and Sales Tax Regulation section 527.7(a)(3), as an addition or alteration to real property that:

- (a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property,
and
- (b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself,
and
- (c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement.

A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free. A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax. A contractor must pay sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement (see Publication 764, *Home Improvements and Repairs*, for additional information) unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*.

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel (Sales Tax Regulation, section 541.2(i)).

This term also includes items such as doors, windows, kits, and prefabricated buildings used in construction.

Floor Covering

Floor covering such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile, and vinyl tile installed as the initial finished floor covering in (1) new construction, (2) a new addition to an existing building or structure, or (3) in a total reconstruction of an existing building or structure, constitutes a capital improvement regardless of the method of installation. As a capital improvement, the charge to the property owner for the installation of floor covering is **not** subject to New York State and local sales and use taxes. However, the retail purchase of floor covering (such as carpet or padding) itself is subject to tax.

Floor covering installed other than as described in the preceding paragraph does not qualify as a capital improvement, even though it meets the criteria stated in (a), (b), and (c). Therefore, the charge for materials and labor is subject to the sales tax, regardless of the manner in which the covering is installed (see Publication 864.1, *Floor Coverings and the Sales Tax Law*, for additional information), but the contractor may apply for a credit or refund of any sales tax already paid on the materials.

The term *floor covering* does **not** include flooring such as ceramic tile, hardwood, slate, terrazzo, and marble. Thus, the rules for determining when floor covering constitutes a capital improvement do not apply to such flooring. Rather, the criteria stated in (a), (b), and (c) above apply to the flooring.

For guidance as to whether a job is a repair or a capital improvement, refer to Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. **For business tax information and forms**, call the Business Tax Information Center at 1 800 972-1233. **For general information**, call toll free 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and Canada**, call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us> Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.